IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CRL.A.No. 211 of 1999(A)

CC.320/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, ATTINGAL
CRL.M.C NO.589/1999 DATED 11/2/1999

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APPELLANT:

NARAYANA PILLAI MOHANDAS,
DIVYAM VEEDU, PALAKUNNU,
CHIRAYINKEEZHU DESOM,
KONTHALLOOR VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.R.RAJASEKHARAN PILLAI

RESPONDENTS:

GOPALA PILLAI SASIDHARAN PILLAI,
AMBADIYIL VEEDU, NEAR L.P. SCHOOL,
CHADAMANGALAM DESOM, KOLLAM KHALIBA
A1-BOUAINAVA, CONT.EST.POST BOX NO.10973, JUBAI-31961,
SAUDI ARABIA.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.211 of 1999 (A)

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Dated this the 3rd day of July, 2007

J U D G M E N T

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act, which stands dismissed.

2. The case of the complainant is that on 10/03/1993, the accused obtained a sum of Rs.45,000/- from the complainant agreeing to arrange a visa for the complainant for a job in the Middle East and that the promise was not kept. On 31/10/1993, the accused gave a cheque for Rs.45,000/-, drawn on State Bank of Travancore, Bombay branch. That cheque, when presented, got dishonoured for want of funds in the account of the accused and lawyer notice was sent but without any response.

3. Evidence adduced in the matter consisted of testimony of PW.1 and Exts.P1 to P5. Defence examined DWs.1 to 3 and got marked Exts.D1 to D3.

4. On a consideration of the evidence adduced in the matter, the trial court found that the cheque was issued for a legally enforceable debt but the complaint was dismissed as the prosecution was launched beyond the time stipulated in the statute, that is, beyond 45 days from the date of the cause of action, that is, receipt of notice demanding payment by the accused. It is the case of the appellant/complainant that two notices were sent simultaneously one, to his residential address and the other to his address abroad. Ext.P5, dated 24/02/1994, is the notice sent in his residential address. It returned with the endorsement that the addressee left India. The notice sent in his address abroad was returned vide Ext.P4 acknowledgment card, dated 24/03/1994. The trial court has found that there is nothing to show in Ext.P4 that the notice was served to the accused in his address at Saudi Arabia. As stated by the complainant that the notice was served on 06/03/1994, Ext.P5 contains date seal dated 28/02/1994 as the date on which the unserved notice was returned to the complainant. The trial court calculated the date from 28/02/1994 and concluded that the prosecution has been launched beyond the deadline stipulated by the Statute.

5. As contended by the counsel for the appellant, I find that the observation of the court below that Ext.P4 received from abroad did not contain anything to show that the notice was served, cannot be upheld. I find that Ext.P4 contains postal seal of the concerned Saudi Arabia post office and it also contains the acknowledgment with date 06/03/1994 and the same was received by the complainant on 24/03/1994. Hence, he has got 45 days time from the above date to file the complaint. The trial court has calculated the date from the date of receipt of Ext.P5, which I find is an erroneous conclusion. The notice evidenced by Ext.P4 has evidently reached the accused and returned back. Hence, the complaint filed is perfectly within the time limit stipulated by the statute.

6. So far as the finding of point No.1 is concerned, I find that the same is supported by proper reasons as evidenced from the testimony of the witnesses and the documents produced.

In the circumstances, the findings of the court below acquitting the accused is set aside. The accused is convicted for

the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and pay a compensation of Rs.45,000/- and in default to undergo simple imprisonment for three months. The appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.211 of 1999 (A)

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J U D G M E N T

3rd July, 2007